

# Self Regulation of the Current Crofting System to meet the Modern Need

A discussion document raised on behalf of the Sleat General Grazings Committee.

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## Introduction

Crofters have long been daunted by the overwhelming volume and weight of the regulatory system and have been continually calling for the overburden of red tape to be reduced.

The current walls of bureaucratic administration are discouraging obstacles and many Crofters are deterred from venturing much for fear of the complexity of the administration involved. This breeds apathy with Committees falling 'out of office' and once this happens, Township Crofters are dispirited and less inclined to attempt a recovery of their position. Active Crofting suffers similarly. In order to keep up with current practice and grass-roots self-determination, Crofting needs a more approachable face than at present and heavy handed pedantry in its administration should be unnecessary.

The Crofting Acts of 1993 and 2010 carry across a preponderance of historical practices and an ideology of enforcement. A new Act is required which energises the Crofting system, with an undercurrent of enablement rather than compulsory control. Passing the prospect for self regulation and assessment to Crofting Townships Committees will enable Crofters, thus freeing them from the burdensome constraints of the existing regulatory system. An over-arching parish-based Area Crofting Committee of elected township representatives would provide umbrella support for matters considered too sensitive to be taken at local Township level, with the caveat that an 'Ombudsman' would be available to act as mediator where an individual Shareholder rejected a decision, with the Scottish Land Court remaining as the final arbiter.

Devolution of powers or authority is an ongoing theme within governmental thinking where Quangos and expensive bureaucracies and authorities that are past their sell-by date have their power transferred to their industry body through a process of self-regulation. It is already widely understood and becoming accepted that the current Crofting Act needs to be scrapped and a completely fresh start made with legislation that is fit for purpose.

Self Regulation is not an alien concept these days as it was introduced by the Health & Safety at Work Act of 1974, which is an enabling act rather than a prescriptive one, stating the end purpose that had to be achieved. How an organisation or individual got there was largely free of prescribed routes but left the end purpose to be achieved by whatever practical means served them best. The Citizens Advice Bureau's comprise autonomous bodies, each of which have to meet their own purpose independently. As no person within is so much of a guru that they can answer all questions, they have access to an on-line system called 'CASTLE' into which they enter criteria and the system returns the relevant answers for interpretation. A parallel system would serve the Crofting Community well. Self Assessment also applies to any Crofter who has submitted a tax return, so the notion of Self Assessment and Self Regulation is not an alien concept that represents a barrier to progress. Investors in People is an effective UK-wide business tool that enables amongst other things, effective communications at all levels within an organisation, where more involvement in running the organisation evolves from those who do the work, rather than abiding by a rigid 'top-down' system. It is simply a case of

familiarisation with those concepts, which at Township Committee level could be freely and easily achieved through discussion and cooperation. As it stands, virtually all assignments, house and garden decroftings, divisions and apportionments that comply with policy are approved. It is very rare to have objections and it is usually the grazings committee that is the objector. Consequently all these cases could be administered locally with objections being dealt with by the Ombudsman.

When drafting any new act, the underlying current should be aimed at achieving 'Self determination through Effective Simplicity'.

Removal of the heavily regulated system and turning to a process of self-regulation lifts the burden and reverses the onus. With practical guidance and understanding from a support team that is dedicated to sustaining a positive, business-related position rather than enforcing a regulated system, Crofters are given an opportunity to maximise their asset.

This proposal document aims to offer a simplified version to the current practice, wherein control of the Crofting system is 'top down' with production and profitability being a variable that is not under cohesive local responsibility. At present, many Crofters are weary of advancing their position because the outlook is burdensome. There is little dynamism in a system where strict control is at arm's length and local incentive does not thrive. As any community aspect of collective accountability is removed by an enforceable regulatory system, there is no direct local responsibility for the enhancement of a Crofting Township.

If Crofting is going to be a dynamic industry, it needs to have the focus shifted from Regulation and Admin first, Production & Profitability (perhaps), to Production & Profitability first, Admin and Regulation in support.

This would be a radical turn-round for all agencies concerned with Crofting and would also require new concepts to be embodied within Crofting Law. A completely fresh mindset needs to be behind any change to Crofting law, along with a simplification of concept that sets the standard to be achieved but which leaves the method of achieving it unprescribed.

As long as the Local and Area Committees along with the Information Centre's advice (see below) are agreed, then that condition becomes the fact for that Township, and that Township's regulations could be amended accordingly.

Lessons from past and current times need to be learned as guides on what to avoid when preparing Crofting for its future. Adherence to embedded practices will maintain Crofting in the condition it is in today, with its attendant overburden of bureaucracy, dependency and much malaise.

Bold steps need to be taken to re-mould the processes and mindsets, to bring Townships that are currently 'out of office' into productive condition and enlighten and enable those who are not fully engaged.

To stick with the past is a vote for more of the same and Crofting needs to move forward from that if it is going to be a competitive force within the highland economy.

This proposal is intended as an outline document, adding 'meat to the bones' of relevant parts of the Shucksmith Report, as laid out in the footnote to the following page.

In order to bring Crofting into the dynamic condition that is necessary for it to be competitive within the current business climate, the following changes are proposed:

## **1. The Crofting Commission:**

The Commission as it stands<sup>1</sup> to be replaced with one **'Crofting Access Centre'** with four functions:

### **Function 1.**

**A Crofting Ombudsman** who will have responsibility for:

- a. Mediation of any issue arising from decisions taken by Crofting Area Committees with regard to Assignations, Decroftings and schemes for development, Sublets, Purposeful use, etc.
- b. Oversee the workings of the Compliance Assessor.
- c. Oversees the workings of the Information Office to ensure information provided is as up to date and accurate as possible, and disseminated in the most appropriate manner.
- d. Have an interface with The Registers of Scotland to confirm that the Crofting Register is accurate and up to date.

### **Function 2**

**A Compliance Assessor** who:

- a. Produces and disseminates an Annual Report form that all Committees are required to complete and submit by an annual date they choose. See Appendix 1.
- b. Monitors Annual Returns sent in by Grazings Clerks.
- c. From these returns, produces an annual 'State of Crofting' report for submission to the Scottish Parliament, along with such comments as thought fit to make.
- d. Determines which Committees should not be 'In Office' and provides practical guidance and advice to return them to that position.
- e. Meet the Media Interest need and external Communications.
- f. Has a direct line of access to the Cabinet Secretary.

### **Function 3**

**An Information Office** which has access to three Solicitors, skilled in the art of Crofting:

- a. To which all have access.
- b. Which provides guidance on any aspect of Crofting Law, both in hard copy and as an on-line facility. The Information Office will have a budget which enables travel directly

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<sup>1</sup> The Shucksmith Report – Committee of Enquiry on Crofting in Part D – Governance for Crofting, states grave reservations with respect to the Crofters Commission in Para. 39. The same reservations remain relevant today. The Shucksmith Report also recommends a separation in the functions of (1) crofting regulation and enforcement, (2) crofting development and (3) the maintenance of the crofting register. Greater local accountability and ownership is also required in the implementation of the regulation and enforcement function.

to a location or to appoint a suitable person skilled in the art to provide advice in their lieu for this irregular task.

- c. Which provides a template set of Township Regulations for all 'In Office' Townships. Township Committees can propose amendments, which, with the agreement of the Area Crofting Committee and Compliance Assessor, can be incorporated into their regulations.
- d. Which maintains and operates a system equivalent to the CAB's 'Castle' System, only tailored to the needs of the Crofting Community.
- e. Which operates and moderates an on-line 'Crofting Forum' so that New Entrants, those facing a puzzling situation and those needing information can have ready access.

#### **Function 4**

**A Training Facility** capable of keeping everybody up to date on changes, by:

- a. Organising and holding ad hoc events centred on Crofting Administration, compliance and new development opportunities.
- b. Producing Guidance Notes and Information Sheets as necessary to cover all aspects of self regulation.
- c. Current Training Providers would still be able to offer their existing range of practical events and would have access to the Crofting Access Centre for support and guidance on legal aspects.

#### **2. Annual Crofting Meeting:**

An Annual Meeting of Crofting Area Committee Representatives will be held at a central or other suitable venue amongst which the following must be discussed:

1. The content of the Township Committees Annual Return
2. The Criteria by which a Committee may be put into Abeyance
3. The number of Committees that have returned to 'In Office'
4. Forms of assistance that are available to a Shareholder or Township Committee, their relevance as 'fit for purpose' and recommendations to the Crofting Access Office for onward submission as a proposal to the Cabinet Secretary with responsibility for the Rural Economy.
5. Financial Report
6. Training and CPD<sup>2</sup> Report
7. The Cabinet Secretary with responsibility for the Rural Economy should attend this Annual Meeting to gain direct feeling and information.

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<sup>2</sup> CPD – Continuous Professional Development. The means by which a person can develop the knowledge and skills they need to enable them to carry out their work capably and competently.

8. Minutes to be posted on-line.

### **3. Out of Office Township Committees:**

Change the terminology to read either: 'In Office' or 'In Abeyance'.

Grazings Committees should be mandatory for any common grazings that are used by one or more shareholders and in particular where payments are claimed.

Where there is only one Shareholder or only one Crofter uses the grazings, a Committee could form by appointing non-crofter officers. Alternately, advice could be sought from the Crofting Access Centre, with accountability either through the Compliance Assessor or through an Area Committee.

Township Committees or its Shareholders cannot access grant or subsidy monies if the Committee is 'In Abeyance'. An 'In Abeyance' Committee would not be represented on the Area Crofting Committee.

### **4. Township Committees:**

Retain the current structure of Chair, Clerk and Members and relevant parts of the regulations on Conduct, Shares, etc.

Responsible for 'Self Regulation'.

Hold a Township AGM or GM at which the content of the Annual Report is discussed and agreed.

Submit an Annual Report to the Crofting Access Centre.

Seek to have representation on their respective Deer Management Group, Community Council and any other relevant local bodies, to ensure that Crofting interests are at the forefront of local decision making.

Has a responsibility for submitting recommendations to the Area Crofting Committee on Assignations, Decroftings, Schemes for Development and 'Purposeful Use' of Crofts. Such recommendations would draw on the information Office's publications for guidance.

Decide on whether their Annual Accounts are of sufficient simplicity to negate the need for an annual formal Audit. The Annual Financial Statement produced for the meeting should agree with the Bank Statement at that date and if sufficiently clear and agreed by all members, be adopted without formal audit. A level of turnover should be agreed by the Committee and written into that Committee's regulations, beyond which an external audit would be required. Exceptional complexity would also determine the need for an audit.

Produce a Training Needs Analysis of their Shareholders Development needs and make provision to meet the Shareholder's CPD needs.

### **5. Area Committees:**

Area Committees should be set up to make decisions on business that might be considered too sensitive for a Township Committee, such as approving or otherwise on:

- Assignations
- Decroftings and Sublets of Crofts
- The 'Purposeful Use' of Crofts
- Schemes for Development, etc

The regulation of an Area Crofting Committee would be agreed by its constituent Grazings Committees with the fundamental principle of supporting effective Communications between the Grazings Committees, thus strengthening the Crofting Community.

Effective administration would be achieved by discussing certain matters in common.

Area Grazings Committees could be Parish - based or otherwise as the constituent Committees deemed appropriate, but the meaning of an 'Area Committee' suggests coverage by adjacent Townships without gaps or having too many Committees for a given area.

Decide on whether its Annual Accounts are of sufficient simplicity to negate the need for an annual formal Audit. The Annual Financial Statement produced for the meeting should agree with the Bank Statement at that date and if sufficiently clear and agreed by all members, be adopted without formal audit. A level of turnover should be agreed by the Committee and written into that Committee's regulations, beyond which an external audit would be required. Exceptional complexity would also determine the need for an audit.

## **6. Registration of Crofts:**

It should be the responsibility of the individual to ensure that all boundaries are correct, and a liaison with the Registers of Scotland could be carried out directly. There is no need for the Commission to intermeddle in the process. Crofters would still be free to appoint their own agents should they deem this necessary. As it stands, the Registers of Scotland do not yet have a system that properly records the complex nature of the Crofting System, therefore that system is in the process of evolving to ensure the official record is correct.

## **7. Advertising Change:**

The length of time taken to advertise applications is excessive and unnecessarily complex. There is little evidence to support the widespread advertising of some functions which the wider community is not interested in. Township Committees know the lie of the land at their level and should know the extent of advertising that would be necessary to achieve the appropriate level of public awareness. In instances where adverts need to be placed, a format similar to the Highland Council's e-planning system could be used.

Guidance and templates would be available from the Information Office at the Crofting Access Centre, but any requirement to advertise assignations, Decroftings or Schemes for Development could instead be done on-line through the Crofting Access Centre's system, removing the financial and administrative burden imposed by the current regulations.

## **8. Funding & Budget:**

The purpose of the Crofting Access Centre is to serve and provide guidance to Crofters. Budgetary support to facilitate the Crofting Access Centre, Annual AGM, on-line Information service, the on-line Forum, An archive of historical information of the previous administrations and statutory training courses would be sourced from the Scottish Government but would be significantly less than that required to support the current system. The detail of budget required to support the system is outside the scope of this document.

## **9. Soumings.**

Soumings are outdated and have no relevance and should be replaced by Area Shareholdings with the stocking densities on the Common Grazings decided by the Grazings Committee following the best practice guidelines by Rural Payments & Inspections Directorate to ensure no over or under grazing.

## **10. Support Payments.**

As part of any reform, the relationship between support payments and grazings committees needs to be resolved, but this would require the support and commitment of the Scottish Government Rural Payments and Inspections Directorate. SGRPID must acknowledge that Grazings Committees have sole responsibility for the management of Common Grazings, but that aspect is outside the scope of this proposal document.

## **11. Housing Developments on Croft Land**

Many Crofting Townships have seen a reduction in land available to agriculture over the decades. Housing developments of scale<sup>3</sup> on improved land should be excluded from the Local Plan, with exceptions being the croft house, development on existing sites or on terrain unsuitable for agricultural use.

## **12. Community Land Ownership**

Current Legislation allows for *Crofting* Communities to buy their own land from a Landlord. Occasions arise when Crofters alone (as opposed to the Crofting Community) are faced with circumstances which would favour a *Crofter* Community Buyout, independent of non-Crofting residents in a Township. Assets covered would include the Common Grazings, a Crofters community buyout of their Crofts, Game and Fishing rights.

There should be scope for more community work with a Landlord.

## **13. Absentee Crofters**

Currently, a Crofter who lives beyond 35 Kilometres of their Croft can be considered 'Absentee'. This figure appears to be arbitrary and is meaningless in terms of personal

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<sup>3</sup> Beyond that of the Croft House.

circumstances. Once again, the need should not be prescriptive, but state the end result to be achieved, such as:

‘Township Committees are to ensure that all Crofts within their township are effectively put to ‘purposeful use’ and shall take such steps as they see fit in order to ensure the criteria of ‘Purposeful use’ is satisfied.’ The meaning of ‘Purposeful Use’ may be re-defined by resolution at the Annual Area Crofting Committee Meeting with advice from the Information Centre or the Membership as necessary.

#### **14. Owner-Occupiers**

This document is aimed at the regulation of the Tenants of Crofts and Deemed Crofts. The issue of Owner-Occupiers needs to receive careful consideration under the context of any new legislation.

#### **15. Landlords:**

Retain the principle of Crofting Tenure as exists today.

#### **16. The Land Court:**

Remains unchanged in scope and influence.

#### **17. SCF/NFU(s)**

Will remain unaffected as they are autonomous bodies that respond to their membership’s needs.

#### **18. Areas not Covered:**

Individual Crofters and Township Committees would be able to raise issues of concern directly with their Local Area Committee through their elected Township Representative, with the option of referring directly to the Crofting Access Office for guidance and to the Ombudsman for mediation of any hitherto intractable disputes. The Scottish Land Court would continue to be the final arbiter.

As the main thrust of new legislation is to enable many functions at local level in the first instance, enabling improved and effective communications and a spirit of agreed outcome should help reduce levels of dispute and facilitate increased cooperation across the many functions that support Crofting.

This Discussion Document is raised on behalf of the Sleat General Grazings Committee.

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*This proposal document contains functions that can easily be accommodated through the application of conventional administration techniques, but others are not immediately clear on how they will work. The following Appendices form part of this document and are intended to provide an explanation and fill in some background to the general proposal.*

## **Appendix 1.**

### **Section 2. a. The Compliance Assessor.**

The Compliance Assessor's function (amongst others) would be to 'Produce and disseminate an Annual Report form that all Committees would be required to complete and submit by an annual date they choose.' Data from these returns will be analysed by the Compliance Assessor and is required to inform the Assessor's annual 'State of Crofting' Report.

Overall, this 'Annual Return' approach is aimed at lightening the burden of regulation via a risk based approach. Put simply, the better the grazings committee is organised, the less the need for external regulatory influence. To prime the process, the role of the Compliance Assessor would be to examine procedures such as decision making systems, content and quality of meeting minutes, records pertaining to croft decisions, accounts etc. Providing guidance, direction and support to enable those functions would impart an incentive to less well organised grazings/ townships.

A 'risk based' system would identify potential pitfalls including financial and governance risks. Well managed committees would have the lowest risk profile and hence the minimal need for external scrutiny, having recognition to continue with the good work. In instances where the assessed risk is higher, committees would need to demonstrate improvements in their systems in order to gain greater autonomy.

To better explain this obligation, the Annual Return form would span several criteria, which could change from year to year as focus shifted. As we are considering an approach that encompasses the concept of Self Assessment, a Committee that submits the form would need to take a clear, objective and dispassionate view of their inherent knowledge, capabilities and practices. Only by being analytical and objective when answering the questions can an accurate picture be built by the Compliance Assessor for the Annual State of Crofting Report. Completion of the report should not be seen as a 'Ticking the boxes' exercise but would need the participation of the full Committee to properly formulate the written answers.

The Compliance Assessor will need to be objective also, because asking the right questions will be of paramount importance. An evidence-based approach will require a verification of some statements made by Committees in order to gain the necessary standard of clarity. It is therefore important that a Committee takes the time to accurately complete their returns by giving full and concise answers in a manner which they know will be helpful to the Compliance Assessor.

A system of SVQ's (Scottish Vocational Qualifications) was an evidence based scheme for assessing competence in the workplace through work-based evidence, direct observations, tests, direct questioning, interviews and professional discussions to assess a client. This scheme evolved but ended in 2015 with its replacement going through the consultancy process at present. The Compliance Assessor will need to hold the relevant Assessor's qualification and it would be helpful if the Grazings Clerk and/or the Chairman of a Committee were also skilled in the art, in order to help provide the Compliance Assessor with the standard of evidence that is being sought.<sup>4</sup>

Knowledge and understanding are enlightening attributes and once skills and experience are imparted and known to work, they become a gift for a lifetime, helping incentivise and manage change.

Given the SVQ framework, the Compliance Assessor would then be able to act upon his/her understanding of a Committee's response. Supporting documentation such as cash flow forecasts, expense claims and financial statements, phone calls and other forms of evidence would score on a

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<sup>4</sup> These analytical skills are useful in everyday life across many differing situations. Entering the need into an individual's CPD Plan will help impart modern thinking techniques and upgrade the overall quality of the knowledge base within Crofting.

points system to determine whether the committee should be 'in office' and to what degree, or 'in abeyance' until they reached a set standard.

Overall, this system would lead to economies and getting the Township Committees up to speed would be more cost effective than financing a regulator who works at arm's length, in remote theory and often in error.

With an audit role and effective management of appeals and objections, the regulation of Crofting would be a very much smaller job than at present, and reflect a diminishing role once more effective committees had become established. Note that legislation in the style of the Health & Safety Work Act 1974 would embody a concept which sets the standard to be achieved but leaves the method of achieving it unprescribed.

## **Appendix 2.**

### **Incentivisation, Productivity & Profitability**

For Crofting to work, it needs to be not just administratively efficient but also productive and profitable. Efficient administrative processes and enabling productivity and profitability are key to the economic development of the system as a whole and the system as a whole needs to be swung to support and enable it. The 'top down' regulatory system currently holds Crofting in its grips and is more concerned with tightening control rather than being focussed on the dynamic future of Crofting. Whilst regulation of any system is very important, it can be handled more efficiently at local level with advice from the Information Office, leaving local committees fully enabled and in control of managing the condition of their Townships.

Enablement is achieved through a combination of incentive, effective communication, and motivation through success. In all instances, Crofting at local level is managed by volunteers and this is a historical situation dating back to when there was never cash available in the community and people readily helped each other out to compensate. However, the demands of modern living, coupled with the burden of administration and the time required to execute this administrative burden has grown immensely, to well beyond that which could be reasonably expected from a volunteer, particularly when others would be benefitting. Currently, there are Chairs and Clerks who feel they are flogging themselves to death for no appreciation, recognition or reward. Whilst having a Township Committee comprised of volunteers is an ideally workable model, the managerial and time aspects take the task beyond the 'reasonableness' of voluntary work. One way to fully enable a healthy Township Committee would be to financially incentivise the key movers - The Chair and Clerk - to help manage all Crofts in their township into the ideal condition.

Pairing some finance from the savings made from an abolition of the Commission to pay the Clerk and Chair of Committees with the minimum hourly wage based on the work done, would be one direct form of stimulus and should fortify any dormant initiative. There is legislative change and an audit trail required to support this, both financial and outcome-based but putting in place a remuneration system based on targets would help encourage Township Committees to get themselves together and organised.

As things currently stand, the greater majority of Township Committees appear to only have sufficient reserves to cover expenses, but given the existing regulations, if an Active Clerk were to bill their committee for the administrative work done on its behalf, that could exhaust the committee account very quickly.

Work on Township Committees encompasses voluntary positions, often of 'pressed people', which implies that unless particularly motivated, there can be a built-in priority based approach to the management and administration time they make available. The number of out-of-office Committees bears witness to a lack of commitment and resolve in many cases and may continue until a firm revenue stream can support the work of Chairs and Clerks more formally, thus bringing a business orientated structure to the operation and productivity of Township Committees.

The objective is to draw inactive Townships from a passive state to a proactive condition and a small financial inducement for key people should help to incentivise that, and along with some relevant training, build in the direction of a business-based approach. That approach would link in to Functions 2 (a. & d.) and 4, and be discussed at the Annual Crofting Meeting. Sections 4 & 5 would be enhanced accordingly.

The changes proposed here should not stop with Crofters and their efforts but extend to the simplification of administration with grant application forms, support systems, processes, advice given by other statutory bodies and the adoption of the 'Crystal mark' standard for clarity within printed documentation.